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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,499	10/15/2004	Dennis Mark Lettkeman	2033.67347	5034
<div>7590 Greer Burns &amp; Crain Suite 2500 300 South Wacker Drive Chicago, IL 60606</div>			<div>EXAMINER SZEKELY, PETER A</div>	
			<div>ART UNIT 1714</div>	<div>PAPER NUMBER</div>
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	04/25/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/511,499

Applicant(s)

LETTKEMAN ET AL.

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                  |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/18/05</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for polymeric polycarboxylates, does not reasonably provide enablement for salts and esters of monomeric polycarboxylic acids. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. One of ordinary skill in the art would have to undertake undue experimentation to find out which polycarboxylates are suitable for the practice of the invention and which are not. See *In re Wands*, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. The term "finely co-ground" in claim 13 is a relative term, which renders the claim indefinite. The term "finely co-ground" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in

the art would not be reasonably apprised of the scope of the invention. Particle size is required.

***Double Patenting***

6. Claims 1-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 7,056,964.

Although the conflicting claims are not identical, they are not patentably distinct from each other because although the patent does not claim cement, the specification establishes the equivalence of lime and cement, making the substitution obvious.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4, 6-12 and 14-21 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Williams 3,869,415, Lowe et al. 4,067,939, Lowe 4,202,857, Harris 4,494,990, Babcock et al. 4,746,365, Brown 5,514,744, Chen et al. 2003/0144384JP-56-045857, JP-61-040861, JP-60-171260, WO 95/33698 or EP 0 725 044.

9. Williams discloses calcium sulfate, acrylic copolymer and water in claim 1 and cement in claim 2. Lowe et al. teach calcined gypsum and cement in claim 1, retarder in claims 18-19, accelerator in claims 20-21 and acrylic resin emulsion in claim 27. The disclosures of Lowe ('857) are similar. Babcock et al. recite cement, gypsum and polymer emulsion in claim 1, polymer concentrations in claims 2-4, Portland cement in

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claim 15 and polycarboxylates in column 8, lines 12-45. Harris divulges cement, gypsum and polymer in claim 1, retarder in claim 3, accelerator in claim 4 and acrylic latex in column 3, lines 38-54. Brown reveals polymer, cement and gypsum in claim 1, alpha-hemi-hydrate in column 3, lines 37-45, retarder in column 4, lines 22-29 and aggregate in column 4, line 30. Chen et al. display polymer in claim 1, molecular weights in claims 6-10, acrylic acid in claim 11, methacrylic acid in claim 17 and the complete formulation in Tables 11 and 12. The three Japanese references show applicants' formulation in their Abstracts. WO 95/33698 presents hemi-hydrate and gypsum in claim 1, set control additives in claim 7 acrylic resins in claim 14 accelerator in Tables I and III, retarder in Table 2 and latex on page 12, lines 25-26 and page 16, lines 24-25. EP 0 725 044 describes cement, gypsum, accelerator, aggregate and acrylic dispersant in claims 1 and 6 and polymers in claims 2-5. Applicants' claims are not novel.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams 3,869,415, Lowe et al. 4,067,939, Lowe 4,202,857, Harris 4,494,990, Babcock et al. 4,746,365, Brown 5,514,744, Chen et al. 2003/0144384JP-56-045857, JP-61-040861, JP-60-171260, WO 95/33698 or EP 0 725 044, in view of Tsubakimoto et al. 4,471,100, Arfaei 4,814,014, Martin 4,028,125, Arfaei 4,960,465, Peik et al. 5,175,278, Koyata et al. 5,223,036, Koyata et al. 5,362,323, Stewart et al. 5,424,099, Takada et al. 5,631,312, Wutz et al. 5,739,212, Albrecht et al. 5,798,425, Lepori et al. 6,043,329, Yamamuro et al. 6,068,697, Albrecht et al. 6,187,887 or Albrecht et al. 6,620,879.

13. The primary references have been discussed already. The secondary references show polycarboxylates and other additives, which according to then can be added to both cement and gypsum. Accordingly, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add each of the additives to a blend of cement and gypsum.

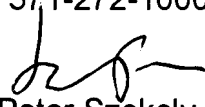
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
4/19/07